



The 3rd legislative package

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1.
Reforming the internal
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The European Commission's proposals within the "3rd package"

- Effective separation of supply and production activities and network operators (unbundling)
- Powers and independence of national regulators
- The Agency for Cooperation of Energy Regulators (ACER)
- Cooperation between transmission system operators
- Improving the functioning of the market

Effective separation of production and network activities (1)

Effective unbundling shall prevent undue discrimination when a vertically integrated company undertakes both competitive and monopolistic business

- Two options are considered by the EC:
 - Full transmission ownership unbundling, considered as “the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market”
 - An Independent System Operator (ISO), subject to detailed regulation and permanent regulatory monitoring
- The Commission is clearly in favour of the first option
- This proposal would to apply in the same terms to electricity and gas sectors
- Those measures also require strengthening the powers and independence of Regulatory authorities, both at European and national levels

Effective separation of production and network activities (2)

- ERGEG's position states that achieving effective competition requires that Transmission System Operators (TSOs) act independently of commercial interests in the market (such as electricity generation, gas shipping, production and supply) in a strictly non-discriminatory manner, i.e effective unbundling
- The model required in new EU legislation is, in principle, ownership unbundling
- the ISO model being proposed by special dispensation

The Agency for the Cooperation of Energy Regulators (ACER) (1)

Composition:

- An Administrative Board (establishes the budget, checks its implementation, draws up internal rules, adopts financial regulations and appoints the Director)
- A Board of Regulators (1 representative of each National Regulatory Authority)

Main tasks of the ACER (electricity and gas sectors):

- Providing a framework for national regulators to cooperate
- Performing regulatory oversight of the cooperation between Transmission system operators (TSOs): has responsibility to monitor and review the activities of the European network of TSOs, gives an opinion on its annual work programme, 10-year investment plan and technical and market codes
- Individual decision powers, such as exemption requests if the concerned infrastructure is located on the territory of more than one Member State
- General advisory role towards the Commission as regards market regulation issues: could issue non-binding guidelines to disseminate good practices among NRAs

The Agency for the Cooperation of Energy Regulators (ACER) (2)

- According to ERGEG, strong, independent regulators are absolutely critical, at EU and national level, not only for the development of a competitive single European energy market, but also for the other two pillars of European Energy Policy: security of supply and sustainability
- Changes are needed in order to improve effectiveness, powers and independence of Board of Regulators:
 - Assent of the Board of Regulators for the selection and possible renewal/dismissal of Director
 - Assent of the Board of Regulators prior to adoption of opinions, recommendations, decisions

The Agency for the Cooperation of Energy Regulators (ACER) (3)

As regards the Commission's proposal, important issues of concern remain:

- the decision power rests with the Commission on key issues related to regulation
- the ACER powers remain limited to the resolution of disputes and compliance issues between national regulators
- decisions related to the development, maintenance and operation of the EU grid are passed to the Commission, with a strong involvement of the European Networks of TSOs by contrast to a limited role of the Regulators through ACER
- ERGEG notes a lack of clarity on exactly how the system is to work in practice between TSOs, ACER and the Commission

Strengthening the powers and independence of National Regulatory Authorities (1)

- Objective: harmonize the powers and competences of NRAs at the highest possible level, in a strictly identical way as regards gas and electricity
- This position is strongly supported by ERGEG
- In all EU countries, regulators should be in a position to exercise their powers impartially and transparently, and to act independently from market interests and political interference
 - its management is appointed for a non-renewable fixed term of at least five years
 - ERGEG insists that every NRA should also have legal personality, budgetary autonomy and adequate human and financial resources to carry out its duties, and its management should have security of tenure

Strengthening the powers and independence of National Regulatory Authorities (2)

- NRAs duties and powers also consist of:
 - ensuring the compliance of TSOs, DSOs, system owners and of any energy undertakings, with their obligations
 - reviewing investment plans of the TSOs
 - monitoring powers, including market monitoring
 - complying with and implement decisions of the ACER and of the Commission
 - Fixing or approving transmission and distribution tariffs
- NRAs shall have the power to issue binding decisions on electricity and gas undertakings:
 - to decide on appropriate measures, including electricity and gas release programs
 - to request any information from undertakings
 - to impose effective, appropriate and dissuasive sanctions
 - to have appropriate rights of investigations and relevant powers of instructions
 - to approve safeguard measures in case of emergency

Enhancing cooperation between Transmission System Operators (TSOs) (1)

- All TSOs shall cooperate at European level through establishing the European Networks for Transmission System Operators for Electricity and for Gas in order to ensure an optimal management of the European transmission networks
- This cooperation at European level can be complemented at regional level
- European Networks for TSOs shall adopt draft technical and market codes, agreed upon according to the priorities defined in the work programme

Enhancing cooperation between Transmission System Operators (TSOs) (2)

- CEER and ERGEG have advocated the creation of such bodies for European TSOs, those who are responsible for building and operating the infrastructure necessary for the development of the European grid, but it is critical that TSOs are effectively regulated at European level too in same terms as national level
- The cooperation between TSOs shall be supervised by the Agency, beginning with technical, market and security codes, to ensure that it is proceeded in an efficient and transparent way

Enhancing cooperation between Transmission System Operators (TSOs) (3)

- CEER proposal: Adoption of strategic guidelines for each codes or rules

The critical component that must be implemented and cover:

- General objectives, level of priority;
 - Roles and responsibilities (of various actors);
 - Specific technical/market issues;
 - ACER after full consultation advise the Commission.
- Benefits:
 - Only Strategic Guidelines are for agreement through comitology;
 - Avoids comitology scrutiny of highly complex, technical output;
 - Agency ensures that codes and rules are consistent with Strategic Guidelines;
 - Codes and rules are enforceable
 - At national level, codes and rules will also need to be consistent with Strategic guidelines/Codes and rules

2.
The third option :
“ Effective and Efficient
Unbundling”

The third option: “ Effective and Efficient Unbundling” (1)

- OU /ISO are not the only solutions which can ensure the independence of the TSOs
- Country support for the third option : Austria, Bulgaria, France, Germany, Greece, Latvia, Luxembourg, Slovakia
- Two main elements:
 - Structural separation but no ownership unbundling
 - Eliminating underinvestment through transparent network development, investment planning and effective sanction
- EEU option:
 - Avoids negative consequences related to Ownership Unbundling and ISO, while legally effectively and efficiently separating networks within vertically integrated undertakings
 - Equal treatment for private and state owned TSOs
 - Equally applicable to gas and electricity TSO
 - Additional protection against non-EU investors useless

The third option: “ Effective and Efficient Unbundling” (2)

- Structural changes for all TSO:
 - TSO must own all network assets, personnel and financial resources necessary for regular business
 - TSO may not outsource regular network task within the integrated undertaking
 - TSO must separate its corporate identity , communication and premises
 - TSO must have independent management and supervisory board (compliance officer)
 - TSO must have compliance management like financial institutions

The third option: “ Effective and Efficient Unbundling” (3)

- Transparent Network development and investment planning by all TSO
 - Transparent long term network development plan and short term investment plan by TSO
 - Regulators could have power regarding such plans
 - Call for tender or obligation if TSO does not invest
- Guaranteed fair network access for new Power Plants
 - TSO must establish and publish transparent and efficient procedures for connection of new power plants to the grid
- Promotion of regional integration: designation of regional coordinator



Thank you for your attention!

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